Supreme Court, U.S.
FILED
MAY 16 1997
CLERK

No. 96- 1692

In the Supreme Court of the United States

OCTOBER TERM, 1996

WILLIAM SPEEN,
PETITIONER,

v.

CROWN CLOTHING CORPORATION, RICHARD SILVERMAN AND JACK SILVERMAN,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

JOHN C. WYMAN
Counsel of Record
TIMOTHY P. COX
ROCHE, CARENS & DEGIACOMO, PC
99 High Street
Boston, MA 02110
(617) 451-9300
Counsel for Respondents

Blanchard Press, Inc., Boston, Mass — Law Printers (617) 426-6690

7 pp

List of Parties

The Respondents adopt the List of Parties set forth at page ii of the Petition. In accordance with Supreme Court Rule 29.1, the Respondents note that Respondent Crown Clothing Corporation has no parent companies or subsidiaries.

Statement of the Case

The Respondents object to the Petitioner's Statement of the Case and Questions Presented because they mischaracterize the facts as they exist in the record from the lower courts. For example, Petitioner's first Question Presented references "company records which show that others with poorer performance than the plaintiff were not discharged ..." This simply is not the fact. As the First Circuit Court of Appeals correctly noted: "The evidence presented reveals that no other salesman experienced a larger decline in sales for the five year period 1987-1992." (A-26).[1]

---

1 The first Question Presented also references "testimony that the president of the defendant company told a 71 year-old plaintiff that he was discharged in order to replace him with someone twenty years younger ...." In fact, as the Court of Appeals accurately reported, the Petitioner testified that Jack Silverman, Crown Clothing Corporation's President, when asked to justify the decision to fire him, said: "Why do I need a 71 year old when I can have a 51 year old?" (A-23). The Petitioner's characterization of the evidence completely disregards the Court of Appeals' entirely proper ruling that such evidence must be considered not "standing alone" but "in the context of all the evidence presented," and that "[e]ven if the jury credited Jack Silverman's alleged statement . . . , Speen was not entitled to a jury verdict in his favor." (A-24, A-27). When the mischaracterization of the president's alleged statement is read together with the misstatement of the evidence described in the text, the combination makes the first Question Presented a complete mischaracterization of the evidence in this case.

Similar mischaracterizations of the facts are present in the Petition's remaining Questions Presented, the Statement of the Case, and the Reasons for Granting the Writ. The material facts are accurately set forth in the opinion of the First Circuit Court of Appeals in Speen v. Crown Clothing Corporation, 102 F.3d 625, 633-34, 637 (1st Cir. 1996), printed in the Petitioner's Appendix at A-15 to A-18 (employee/independent contractor evidence) and A-26 to A-27 (discriminatory intent evidence). There is no reason for repeating or reprinting the facts in this Brief in Opposition.

Reasons for Denying the Writ

The Petition should be denied because there are no special or important reasons for granting the Petition, as defined in Supreme Court Rule 10. The decision of the First Circuit Court of Appeals is not in conflict with any decision of any other United States Court of Appeals or with any state court of last resort, nor has the Petitioner alleged any such conflict. Similarly, the Court of Appeals did not depart from the accepted and usual course of judicial proceedings so as to call for this Court to exercise its power of supervision. The First Circuit applied the correct standard for deciding a motion for judgment as a matter of law under Fed. R. Civ. P. 50(a), considering the evidence and the reasonable inferences to be drawn from it in the light most favorable to the Petitioner. (A-5). Having done so, the First Circuit correctly determined that the evidence viewed in this light would not permit a reasonable jury to find in favor of the Petitioner on any permissible claim or theory.

Furthermore, none of the Questions Presented raise any important question of federal law that should be settled by this Court.[2] The decisions of the District Court and the First Circuit were correct, turned upon the particular facts as presented at trial, and will affect only the parties to this litigation.

---

2 In fact, the Petitioner's challenge to the District Court's determination that there was insufficient evidence to prove discriminatory intent does not raise a federal question at all. As pointed out by the Court of Appeals at A-18 to A-20, the question of discriminatory intent arose in the context of Petitioner's Massachusetts common law claims against the two individual officers/shareholders of Crown because Massachusetts law considers "age discrimination as sufficient to meet the proof of malice needed for recovery under this [interference with advantageous business relationship] tort claim." (A-20). As it stated in footnote 5 of its Opinion at A-21, the Court of Appeals (like the District Court) focused "on relevant Massachusetts precedents" in deciding this issue.

Conclusion

The Petition relies upon mischaracterization of the facts in the record below, and in any event does not present any special or important questions that are appropriate for this Court's consideration. Accordingly, the Petition for a Writ of Certiorari should be denied.

Respectfully Submitted,

JOHN C. WYMAN,
Counsel of Record
TIMOTHY P. COX
Roche, Carens & DeGiacomo, P.C.
99 High Street
Boston, MA 02110
(617) 451-9300
Counsel for the Respondents

§ 9. Chapter Construed Liberally; Inconsistent Laws; Procedure Exclusive; Damages or Injunctive Relief.

. . .

Any person claiming to be aggrieved by a practice concerning age discrimination in employment made unlawful by section four may bring a civil action under this section for damages or injunctive relief, or both, and shall be entitled to a trial by jury on any issue of fact in an action for damages regardless of whether equitable relief is sought by a party in such action. If the court finds for the petitioner, recovery shall be in the amount of actual damages; or up to three, but not less than two, times such amount if the court finds that the act or practice complained of was committed with knowledge, or reason to know, that such act or practice violated the provisions of said section four. The provisions set forth in the first, second and third paragraphs shall be applicable to such complaint or action to the extent that such provisions do not conflict with the provisions set forth in this paragraph.